Nos. 501 and 502.

FILED
JAN 7 1901
JAMES H. McKENNEY,
Clerk.

Ft. of Ward, Carlisle & Curtis for

# Supreme Court of the United States.

OCTOBER TERM, 1900

Filed Jan. 7, 1901.

HENRY W. DOOLEY, LOUIS G. SMITH and CHARLES W. OGDEN, trading as copartners under the firm name of Dooley, Smith & Company,
*Plaintiffs in Error.*
*vs.*
THE UNITED STATES,
*Defendant in Error.*
No. 501.

THE SAME
*vs.*
THE SAME.
No. 502.

# BRIEF FOR PLAINTIFFS IN ERROR.

HENRY M. WARD,
*For Plaintiffs in Error.*

J. G. CARLISLE,
WILLIAM EDMOND CURTIS,
*Counsel.*

C. G. Burgoyne, Walker and Centre Streets, N. Y.

28521

# Supreme Court of the United States.

OCTOBER TERM, 1900.

| | |
|---|---|
| HENRY W. DOOLEY, LOUIS G. SMITH and CHARLES W. OGDEN, trading as copartners under the firm name of Dooley, Smith & Company, Plaintiffs in Error, vs. THE UNITED STATES, Defendant in Error. | No. 501. |
| THE SAME vs. THE SAME. | No. 502. |

## BRIEF FOR PLAINTIFFS IN ERROR.

### STATEMENT.

These two cases, numbers 501 and 502, come here on writs of error from the Circuit Court of the United States for the Southern District of New York. The plaintiffs, who are the same in both actions, are all citizens of the State of New York, and members of the firm of Dooley, Smith & Company, doing business as general commission merchants and shippers of merchandise between New York and San Juan, Porto Rico. The suits

were brought against the United States under the provisions of the Act of March 3, 1887, commonly known as the Tucker Act.

The petition in the first action, No. 501, sets forth that prior to August 12th, 1898, the Island of Porto Rico belonged to Spain as a colonial possession, and that a civil government had there been established with the proper civil and municipal authorities; that said government had enacted, among other laws, certain tariff duties upon imports into Porto Rico from the United States, and that such duties were in force when the island was seized and occupied by the military and naval forces of the United States in July, 1898 (fol. 7). It is further alleged that on August 12th, 1898, a protocol for a treaty of peace was duly signed in behalf of both governments. This protocol contains the following provisions with reference to Porto Rico:

ARTICLE II.:

> "Spain will cede to the United States the island of Porto Rico and other islands now under Spanish sovereignty in the West Indies." * * *

ARTICLE IV.:

> "Spain will immediately evacuate * * * Porto Rico and other islands now under Spanish sovereignty in the West Indies. * * * Each government will, within ten days, appoint Commissioners, who shall, within thirty days from the signing of this protocol, meet at San Juan, in Porto Rico, for the purpose of arranging and carrying out the details of the aforesaid evacution of Porto Rico and other islands now under Spanish sovereignty in the West Indies."

ARTICLE VI.:

> "Upon the conclusion and signing of this protocol hostilities between the two countries shall cease." * * *

*(Conventions, 1898, p. 118.)*

It is further alleged that upon the signing of such protocol all hostilities ceased, and that from that date to the present time there have been no hostilities of any kind, and no military operations of any kind have been conducted by the United States upon said island; that the island was thereupon abandoned by Spain and her sovereignty relinquished, her troops withdrawn and all public property on the island delivered to and taken possession of by the United States; that ever since the said 12th day of August, 1898, the said island has been in a condition of peace and its inhabitants have been in the enjoyment of civil rights, except in so far as such rights have been affected by the military orders therein referred to.

It is further alleged (fol. 7) that the treaty of peace between the United States and Spain was entered into by the duly authorized representatives of both governments and signed on the 10th day of December, 1898.

This treaty provides, with reference to Porto Rico, as follows:

> "ARTICLE II. Spain cedes to the United States the island of Porto Rico and other islands now under Spanish sovereignty in the West Indies * * *."
>
> "ARTICLE VIII. In conformity with the provisions of Article II. of this treaty, Spain * * * cedes in Porto Rico and the other islands in the West Indies * * * all the buildings, wharves, forts, barracks, fort structures, public highways and other immovable property which in conformity with law belong to the public domain and as such belong to the Crown of Spain."
>
> "ARTICLE IX. * * * the civil rights and political status of the native inhabitants of the territories hereby ceded shall be determined by the Congress.
>
> "ARTICLE XIII. * * * Spanish scientific, literary and artistic works not subversive of public order in the territories in question, shall continue to be admitted free of duty into such territories for the period of ten years, to be reckoned from the date of the exchange of the ratifications of this treaty."

It is further alleged (fol. 7) that the said treaty was duly ratified by the Senate of the United States on the 6th day of February, 1899, by the Queen Regent of Spain and the Spanish Cortes on the 19th day of March, 1899, and that the ratifications were exchanged at the City of Washington, and the treaty proclaimed by the President on the 11th day of April, 1899.

It is further alleged (fols. 8, 9) that on the 19th day of August, 1898, the President made an order establishing a customs tariff and regulations for ports in Porto Rico, and that duties were collected thereunder by the military officers until February 1st, 1899, upon all merchandise brought into Porto Rico from other parts of the United States, and that after February 1st, 1899, and until May 1st, 1900, customs duties upon all merchandise brought into Porto Rico from other parts of the United States, including the duties exacted from the plaintiffs, were levied and collected by the War Department, and by the military officers of the United States, under, and by virtue of the "Amended Customs Tariff and Regulations for Ports in Porto Rico," promulgated by the order of the President of January 20th, 1899.

The order in question is as follows:

"EXECUTIVE MANSION, January 20, 1899.

"By virtue of the authority vested in me as Commander-in-Chief of the Army and Navy of the United States of America, I do hereby order and direct that the following tariff of duties and taxes shall be levied and collected, and the regulations for the administration thereof shall take effect and be in force in all ports and places in the island of Porto Rico, and all islands in the West Indies, east of the seventy-fourth degree west longitude, evacuated by Spain, on and after February 1, 1899.

"All questions arising in the administration of customs shall be referred to the collector at the Port of San Juan for decision, and there shall be no appeal from such decision, except in cases where the collector may find it expedient to ask

for special instructions of the War Department on the points involved.

"Necessary and authorized expenses for the administration of said tariff and regulations shall be paid from the collections thereunder.

"Accurate accounts of collecting and expenditures shall be kept and rendered to the Secretary of War.

"WILLIAM MCKINLEY."

Following the order are detailed regulations for the enforcement of the tariff by the military authorities, and full schedules of classes of articles subject to duty, with the rates of duty chargeable thereon, and a statement of articles placed on the "free list," the general scheme being similar to that of the existing tariff laws of the United States, but the rates of duty charged being wholly different from those set forth in the tariff of 1897. Such duties were, moreover, levied at the same rates upon articles brought into Porto Rico from the States as upon articles imported there from foreign countries. These regulations and schedules are very long, and it does not seem necessary, for the purposes of this brief, to set them out at length, as no question is made in these cases as to whether the duties were assessed upon plaintiffs' goods at the rates fixed by the schedules or as to whether the goods were properly classified.

It is further alleged (fol. 10) that Henry W. Dooley, one of the plaintiffs, being a citizen of the State of New York, went to the City of San Juan, in Porto Rico, in the early part of 1899, and prior to April 11th, and remained there in connection with his business until after May 1st, 1900; that during this period the plaintiffs sent their goods from the port of New York consigned to said Dooley at San Juan, and that he, as agent for plaintiffs, entered such goods, or caused them to be entered, at the port of San Juan, and that thereupon duties were assessed and levied upon said goods by the officer of the army who had been put in charge of

their collection, Major, afterwards Lieutenant-Colonel, Charles L. Davis, of the Eleventh U. S. Infantry; and thereafter the duties so assessed were paid by said Dooley for the plaintiffs under protest and by compulsion of the military authorities, and in order to enable plaintiffs to obtain their goods from the custody of the United States.

Annexed to the petition is a schedule of the duties so paid at various dates between April 11th, 1899, and May 1st, 1900, amounting to $5,374.68. The petition further states (fol. 11) that the amount of said duties is now held by the United States, and is due to the plaintiffs, who have demanded payment, which demand has been refused.

To this petition the United States demurred upon two grounds: (1) "That the Court has not jurisdiction of the subject of the action; (2) that the complaint does not state facts sufficient to constitute a cause of action" (fol. 16).

The Circuit Court, on these pleadings, made a formal decision, as required by the sixth section of the Tucker Act (fol. 17), and thereupon granted judgment (fol. 18) in conformity with the decision, sustaining the demurrer "upon the ground that the petition does not set forth facts sufficient to constitute a cause of action," and dismissing the petition with costs. Judgment was thereupon entered by the Clerk dismissing the complaint and adjudging that the defendant recover of plaintiffs the sum of $14.60 costs, and that defendant have execution therefor (fol. 20).

The Court thus, by taking cognizance of the cause and awarding a money judgment with its process of execution, virtually determined the question of its jurisdiction, as raised by the demurrer, in favor of plaintiffs.

The plaintiffs filed the following assignments of errors (fols. 21–24):

I. The Court erred in holding that the imposition and collection of the duties in the island of

Porto Rico under the order of the President of the United States, as set forth in the petition, are not in violation of the first section of the first article of the Constitution of the United States, which declares that "*all legislative powers herein granted shall be vested in a Congress of the United States, which shall consist of a Senate and a House of Representatives.*"

II. The Court erred in holding that the imposition and collection of the duties in the island of Porto Rico under the order of the President of the United States, as set forth in the petition, are not in violation of that portion of the seventh section of the first article of the United States, which declares that "*all bills for raising revenue shall originate in the House of Representatives.*"

III. The Court erred in holding that the imposition and collection of the duties in the Island of Porto Rico under the order of the President of the United States, as set forth in the petition, are not in violation of that portion of the eighth section of the first article of the Constitution of the United States which declares that "*the Congress shall have power to lay and collect taxes, duties, imposts and excises, to pay the debts and provide for the common defense and general welfare of the United States; but all duties, imposts and excises shall be uniform throughout the United States.*"

IV. The Court erred in holding that the imposition and collection of the duties in the Island of Porto Rico under the order of the President of the United States, as set forth in the petition, were not in violation of that portion of the eighth section of the first article of the Constitution of the United States which declares that the Congress shall have power "*to make all laws which shall be necessary and proper for carrying into execution the foregoing powers, and all other powers vested by this Constitution in the Government of the United States, or in any department or officer thereof.*"

V. The Court erred in holding that the imposition and collection of the duties in the Island of Porto Rico under the order of the President of the United States, as set forth in the petition, were not in violation of that portion of the ninth section of the first article of the Constitution of

the United States which declares that "*no tax or duty shall be laid on articles exported from any State.*"

VI. The Court erred in holding that the imposition and collection of the duties in the Island of Porto Rico under the order of the President of the United States, as set forth in the petition, were not in violation of that portion of the third section of the fourth article of the Constitution of the United States which declares that "*the Congress shall have power to dispose of and make all needful rules and regulations respecting the territory or other property of the United States.*"

VII. The Court erred in holding that the imposition and collection of the duties in the island of Porto Rico under the order of the President of the United States, as set forth in the petition, were not in violation of the treaty of peace made between the United States and Spain, known as "the treaty of Paris."

VIII. The Court erred in holding that at the time of the imposition and collection of the duties, as stated in the petition, *the island of Porto Rico was not a part of the United States.*

IX. The Court erred in holding that the *President of the United States, under the powers given to him by the Constitution,* could lawfully impose and collect from the petitioners the duties set forth in the petition.

X. The Court erred in holding that the collection of the duties, as set forth in the petition, was not in violation of that portion of the fifth amendment of the Constitution which declares that *no person * * * shall be deprived of * * * property without due process of law; nor shall private property be taken for public use without just compensation.*

XI. The Court *erred in sustaining the demurrer* to the petition and in holding that the petition did not set forth facts sufficient to constitute a cause of action.

XII. The Court erred in dismissing the petition.

The petition in the second action, No. 502, sets forth the events stated in No. 501, which took place down to

May 1st, 1900, and then alleges that on May 1st, 1900, the Act of Congress of April 12th, 1900, relating to Porto Rico, went into effect.

This act is entitled :

"An Act temporarily to provide Revenues and a Civil Government for Porto Rico and for other purposes."

The first five sections of the act provide the revenues, and the remaining thirty-six sections organize the local government. The portions of the act under which the duties in question were collected form an independent system of taxation separable from the body of the act so that to hold them invalid need not affect the other provisions.

The portions of the act by which the duties are imposed are as follows :

"SEC. 1. That the provisions of this Act shall apply to the Island of Porto Rico and to the adjacent islands lying east of the seventy-fourth meridian * * * and the name of Porto Rico, as used in this Act, shall be held to include not only the island of that name but all the adjacent islands as aforesaid.

"SEC. 2. That on and after the passage of this Act the same tariffs, customs and duties shall be levied, collected and paid upon all articles imported into Porto Rico from ports other than those of the United States, which are required by law to be collected upon articles imported into the United States from foreign countries. *Provided*, that on all coffee, in the bean or ground, imported into Porto Rico there shall be levied and collected a duty of five cents per pound * * * *and provided further* that all Spanish scientific, literary and artistic works * * * shall be admitted free of duty into Porto Rico for a period of ten years * * * and provided further that all books and pamphlets printed in the English language shall be admitted into Porto Rico free of duty when imported from the United States.

"SEC. 3. That on and after the passage of this Act *all merchandise coming into the United States*

*from Porto Rico and coming into Porto Rico from the United States shall be entered at the several ports of Entry upon payment of fifteen per centum of the duties which are required to be levied,* collected and paid *upon like articles of merchandise imported from foreign countries;* and in addition thereto upon *articles of merchandise of Porto Rican manufacture coming into the United States* and withdrawn for consumption or sale *upon payment of a tax equal to the internal revenue tax imposed in the United States* upon the like articles of merchandise of domestic manufacture, such tax to be paid by internal revenue stamps * * * and *on all articles of merchandise of United States manufacture coming into Porto Rico in addition to the duty above provided upon payment of a tax equal in rate and amount to the internal revenue tax imposed in Porto Rico* upon the like articles of Porto Rican manufacture;

"*Provided* that on and after the date when this Act shall take effect all merchandise and articles except coffee not dutiable under the tariff laws of the United States, and all merchandise and articles entered in Porto Rico free of duty under orders heretofore made by the Secretary of War, shall be admitted into the ports thereof when imported from the United States free of duty; and whenever the legislative assembly of Porto Rico shall have enacted and put into operation a system of local taxation to meet the necessities of the government of Porto Rico by this Act established, and shall by resolution duly passed so notify the President, he shall make proclamation thereof, *and thereupon all tariff duties on merchandise and articles going into Porto Rico from the United States or coming into the United States from Porto Rico shall cease,* and from and after such date all such merchandise and articles shall be entered at the several ports of entry free of duty; and in no event shall any duties be collected after the first day of March, 1902, on merchandise and articles going into Porto Rico from the United States, or coming into the United States from Porto Rico.

"SEC. 4. That the duties and taxes collected in Porto Rico in pursuance of this Act, less the cost

of collecting the same, and *the gross amount of all collections of duties and taxes in the United States* upon articles of merchandise coming from Porto Rico, shall not be carried into *the general fund of the Treasury, but shall be held as a separate fund*, and *shall be placed at the disposal of the President*, to be used for the government and benefit of Porto Rico until the government of Porto Rico herein provided for, shall have been organized, when all moneys theretofore collected under the provisions hereof, then unexpended, shall be transferred to the local treasury of Porto Rico, and the Secretary of the treasury shall designate the several ports and subports of entry in Porto Rico, and shall make such rules and regulations and appoint such agents as may be necessary to collect the duties and taxes authorized to be levied, collected and paid in Porto Rico by the provisions of this Act, and he shall fix the compensation and provide for the payment thereof of all such officers, agents and assistants as he may find it necessary to employ to carry out the provisions hereof. *Provided, however*, that as soon as a civil government for Porto Rico shall have been organized in accordance with the provisions of this Act and notice thereof shall have been given to the President he shall make proclamation thereof, *and thereafter all collections of duties and taxes in Porto Rico under the provisions of this Act shall be paid into the treasury of Porto Rico*, to be expended as required by law for the government and benefit thereof, *instead of being paid into the treasury of the United States.*"

The following sections of the act create and organize a civil government similar in its general nature to the various territorial governments which have been formed for the " organized territories ":

By Section 14 it is provided that the statutory laws of the United States not locally inapplicable shall be in force *except the internal revenue laws.*

By Section 16 it is provided that all the officials shall take an oath to support the Constitution of the United States.

By Section 38 it is provided :

> " That no export duties shall be levied or collected on exports from Porto Rico ; but taxes and assessments on property, and license fees for franchises, privileges and concessions may be imposed for the purposes of the insular and municipal governments respectively, as may be provided and defined by act of the Legislative Assembly."

From and after May 1st, 1900, the administrative system provided for by this act was put into operation, and duties have since been collected at Porto Rico as therein provided.

It is further alleged that the said plaintiff Henry W. Dooley went to San Juan in 1899 and remained there until October, 1900 ; that since May 1st, 1900, plaintiffs shipped certain merchandise from the port of New York, consigned to said Dooley as their agent at San Juan, and that thereupon said Dooley was compelled by the custom officers of the United States at San Juan to pay certain duties under the alleged authority of said act in order to enter such merchandise at that port ; that such duties were paid in behalf of the plaintiffs under protest and by compulsion of such officers, and in order to enable plaintiffs to obtain such merchandise from the custody of the United States (fol. 9) ; that the sum of duties so paid from May 1st, 1900, to October 23, 1900, is $1,433.11, which sum is now held by the United States and is now due the plaintiffs ; that payment thereof has been demanded and refused.

The United States interposed a demurrer in the same form as in No. 501, and a similar decision and judgment were rendered and judgment entered by the Clerk dismissing the complaint with $10.50 costs and awarding execution.

In this case the plaintiffs filed the following assignments of error :

> I. The Court erred in holding that the imposition and collection of the duties in the Island of Porto

Rico under the alleged authority of the Act of Congress of April 12th, 1900, as set forth in the petition, was not in violation of that portion of the eighth section of the first article of the Constitution of the United States which declares that "*The Congress shall have power to lay and collect taxes, duties, imposts and excises, to pay the debts and provide for the common defense and general welfare of the United States; but all duties, imposts and excises shall be uniform throughout the United States.*"

II. The Court erred in holding that the imposition and collection of the duties in the Island of Porto Rico under the alleged authority of the Act of Congress of April 12th, 1900, as set forth in the petition, were not in violation of that portion of the ninth section of the first article of the Constitution of the United States which declares that "*no tax or duty shall be laid on articles exported from any State.*"

III. The Court erred in holding that the imposession and collection of the duties in the Island of Porto Rico under the alleged authority of the Act of Congress of April 12th, 1900, as set forth in the petition, were not in violation of that portion of the third section of the fourth article of the Constitution of the United States which declares that "*the Congress shall have power to dispose of and make all needful rules and regulations respecting the territory or other property of the United States.*"

IV. The Court erred in holding that the imposition and collection of the duties in the Island of Porto Rico under the alleged authority of the Act of Congress of April 12th, 1900, as set forth in the petition, were not in violation of that portion of the fifth amendment of the Constitution which declares that "*no person * * * shall be deprived of * * * property without due process of law; nor shall private property be taken for public use without just compensation.*"

V. The Court erred in holding that the imposition and collection of the duties in the Island of Porto Rico under the alleged authority of the Act of Congress of April 12th, 1900, as set forth in the petition, were not in violation of the ninth amendment of the Constitution, which declares that "*the*

*enumeration in the Constitution of certain rights shall not be construed to deny or disparage others retained by the people.*"

VI. The Court erred in holding that the imposition and collection of the duties in the Island of Porto Rico under the alleged authority of the Act of Congress of April 12th, 1900, as set forth in the petition, were not in violation of the tenth amendment of the Constitution, which declares that "*the powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.*"

VII. The Court erred in holding that the imposition and collection of the duties in the Island of Porto Rico under the alleged authority of the Act of Congress of April 12th, 1900, as set forth in the petition, were not in violation of the treaty of peace made between the United States and Spain, known as "the treaty of Paris."

VIII. The Court erred in holding that at the time of the imposition and collection of the duties, as stated in the petition, the Island of Porto Rico was not a part of the United States.

IX. The Court erred is holding that the duties set forth in the petition *were lawfully collected from the petitioners.*

X. The Court erred *in sustaining the demurrer to* the petition and in holding that the petition did not set forth facts sufficient to constitute a cause of action.

XI. The Court erred in dismissing the petition.

In order to save further repetition we entitle this brief in both cases. Substantially all of the argument is germane to both except that portion relating specifically to the power of the President.

We base our contention upon the following points:

FIRST. AT ALL TIMES SINCE THE RATIFICATION OF THE TREATY PORTO RICO HAS BEEN A PART OF THE UNITED STATES.

SECOND. AS A CONSEQUENCE OF THE TREATY THE ENTIRE SOVEREIGNTY OVER PORTO RICO HAS BECOME VESTED IN THE UNITED STATES, BUT THE EXECUTIVE AND LEGISLATIVE DEPARTMENTS OF THE FEDERAL GOVERNMENT HAVE ONLY SUCH POWER IN RELATION TO PORTO RICO AS IS GRANTED TO THEM BY THE CONSTITUTION.

THIRD. THE PRESIDENT HAD NOT THE POWER, UNDER THE CONSTITUTION, TO MAKE OR ENFORCE THE ORDER OF JANUARY 20TH, 1899, IN SO FAR AS IT IMPOSED DUTIES UPON ARTICLES OF MERCHANDISE BROUGHT INTO PORTO RICO FROM OTHER PARTS OF THE UNITED STATES.

FOURTH. CONGRESS HAD NOT THE POWER UNDER THE CONSTITUTION TO IMPOSE THE TAXES OR DUTIES IMPOSED BY THE ACT OF APRIL 12TH, 1900, UPON ARTICLES OF MERCHANDISE BROUGHT INTO PORTO RICO FROM OTHER PARTS OF THE UNITED STATES OR INTO OTHER PARTS OF THE UNITED STATES FROM PORTO RICO.

We now proceed to the discussion of these points in the order stated.

FIRST. AT ALL TIMES SINCE THE RATIFICATION OF THE TREATY PORTO RICO HAS BEEN A PART OF THE UNITED STATES.

We do not propose to discuss the power of the United States to acquire or to hold the island. This power, once so much doubted by Jefferson, has now become firmly established by the practice of the government and the decisions of this Court. Nor need we discuss in this brief the question as to the exact date when the sovereignty of Spain was relinquished and the island passed completely and fully under our jurisdiction. All the claims in these two actions are based upon duties collected at San Juan after April 11th, 1899, when the treaty was finally ratified and proclaimed by the President.

By the treaty Spain cedes the Island of Porto Rico to the United States without limitation or reservation of any portion of her sovereignty, and, by the operation of such treaty, which has, under the Constitution, the force of a law, Porto Rico has become as much a part of the United States as any one of the organized States or Territories or the District of Columbia.

This is distinctly held in *Cross vs. Harrison*, 16 How., 164, at 197.

SECOND. AS A CONSEQUENCE OF THE TREATY THE ENTIRE SOVEREIGNTY OVER PORTO RICO HAS BECOME VESTED IN THE UNITED STATES, BUT THE EXECUTIVE AND LEGISLATIVE DEPARTMENTS OF THE FEDERAL GOVERNMENT HAVE ONLY SUCH POWER IN RELATION TO PORTO RICO AS IS GRANTED TO THEM BY THE CONSTITUTION.

The island having passed into the exclusive possession and control of the United States no other nation can question that ownership or exercise any of the powers of government. But in using the expression "sovereignty" or "ownership" of the United States we mean not the sovereignty or ownership of the Government or of the President or of Congress, but the sovereignty or ownership of the people of this country in whom the ultimate power is lodged, and by whom not all power but certain enumerated powers only have been delegated to the various co-ordinate branches of the Government. Consequently, it does not follow that because Spain has yielded her sovereignty Congress has unlimited sovereign powers. Congress has no powers whatsoever derived from any other source than the Constitution. It does not derive any additional powers from international law or from "the fact that the United States is a sovereign nation," or from the fact that the exercise of such power may be deemed necessary in order to carry out the policy of a particular administration.

28529



The extent of the power of this Government over a newly acquired territory cannot depend, in the least degree, upon the powers of its former owner, or upon analogies drawn from the powers exercised in like cases by other nations. The power of the heads of absolute monarchies, such as the Czar of Russia or that of military dictators such as have from time to time assumed all the powers of government over the Mexican and South American republics, or the powers of the legislatures of limited monarchies, such as the parliament of Great Britain, furnish no guide for ascertaining the extent of the power of the Government of this country.

The point we are making is well expressed by Mr. Justice McKinley in the opinion in *Pollard's Lessee vs. Hagan*, 3 How., 212, at 225:

> "It cannot be admitted that the King of Spain could by treaty or otherwise impart to the United States any of his royal prerogatives; and much less can it be admitted that they have capacity to receive or power to exercise them. Every nation acquiring territory by treaty or otherwise, must hold it subject to the constitution and laws of its own government, and not according to those of the government ceding it (Vat. Laws of Nations, b. 1, c. 19, s. 210, 244, 245, & b. 2, c. 7, s. 80).

Indeed we would not deem it necessary to do more than state the proposition that there is no absolute unlimited power in our government were it not that the claim of such power seems to lie at the foundation of the contention of the Government in the case at bar. To state it in another form we may say that every express grant of power to any branch of the Government, however absolute in terms, is limited either by express prohibitions and limitations, or by the implied limitation arising out of the grant or limitation of other powers. To illustrate:

The power is granted to the President to make treaties, provided that two-thirds of the Senate con-

cur, and this power is, on its face, absolute, yet it has been repeatedly held that no treaty can be made which violates any of the provisions of the Constitution, and that the general limitations apply with as much force to the treaty-making power as to any other power expressly granted.

> " The government of the United States is one of limited powers. It can exercise authority over no subject except those which have been delegated to it. Congress cannot by legislation enlarge the federal jurisdiction, nor can it be enlarged under the treaty-making power."
>
> *New Orleans vs. U. S.*, 10 Pet., at 735.

> " It need hardly be said that a treaty cannot change the Constitution or be held valid if it be in violation of that instrument. This results from the nature and fundamental principles of our government. The effect of treaties and acts of Congress when in conflict is not settled by the Constitution. But the question is not involved in any doubt as to its proper solution. A treaty may supersede a prior act of Congress, and an act of Congress may supersede a prior treaty."
>
> *The Cherokee Tobacco*, 11 Wall., 616, at 620.

So Congress has the exclusive power to regulate interstate commerce, but in exercising this power it is limited by the provision that private property shall not be taken for public use without just compensation.

> " The power to regulate commerce has no limitation other than those prescribed in the Constitution; the power, however, does not carry with it the right to destroy or impair those limitations and guarantees which are also placed in the Coutitution or in any of the amendments to that instrument (Monongahela Nav. Co. vs. U. S., 148 U. S., 312, 336; Interstate Commerce Comm. vs. Brimson, 154 U. S., 447, 479).
>
> *U. S. vs. Joint Traffic Assn.*, 171 U. S., at 571.

By the 17th paragraph of the eighth section of the first article exclusive power is given to Congress to legislate for the District of Columbia, but it has been held that, in spite of the exclusive grant, Congress cannot deprive the inhabitants of the District of the right to a trial by jury in common law or criminal cases as secured by the 6th and 7th amendments. And that private property in the District cannot be taken for public use without just compensation.

*Callan vs. Wilson*, 127 U. S., 540.

In *Capital Traction Co. vs. Hof*, 174 U. S., 1, at 5, Mr. Justice GRAY, delivering the opinion of the Court, says:

> "The Congress of the United States, being empowered by the Constitution "to exercise exclusive legislation in all cases whatsoever" over the seat of the National Government, has the entire control over the District of Columbia for every purpose of government, national or local. It may exercise within the District all legislative powers that the Legislature of a State might exercise within that State; and may vest and distribute the judicial authority in and among Courts and Magistrates, and regulate judicial proceedings before them, and it may think fit, so long as it does not contravene any provision of the Constitution of the United States (*Kendall vs. U. S.* [1838], 12 Pet., 524, 619; *Mattingly vs. Distr. of Columbia* [1878], 97 U. S., 687, 690; *Gibbons vs. Distr. of Columbia* [1886], 116 U. S., 404, 407).
>
> "It is beyond doubt at the present day that the provisions of the Constitution of the United States securing the right of trial by jury, whether in civil or criminal cases, are applicable to the District of Columbia (*Webster vs. Reid* [1850], 11 How., 437, 460; *Callan vs. Wilson* [1888], 127 U. S., 540, 550; *Thompson vs. Utah* [1898], 170 U. S., 343)."

The President is commander-in-chief of the military forces, but in waging war he cannot authorize the tak-

ing of private property for public use without just compensation.

*Mitchell vs. Harmony*, 13 How., 115, at 133.

Under the fourth section of the fourth article the United States is required to guarantee to every State a republican form of government. This power is subject to the general limitations on all powers.

> "*In the exercise of the power* conferred by the guaranty clause — Art. IV., § 4, 'The United States shall guarantee to every State in this Union a republican form of government'—*as in the exercise of every other constitutional power*, a discretion in the choice of means is necessarily allowed. It is *essential only that the means must be necessary and proper for carrying into execution the power conferred through* the restoration of the State to its constitutional relations under a republican form of government, and that no acts be done, *and no authority exerted, which is either prohibited or unsanctioned by the Constitution.*"
>
> *Texas vs. White*, 7 Wall., 700.

These illustrations are selected from a few of the cases in which these questions have been decided by this Court, and we take it that these cases, while they do not cover every grant of power, yet settle the principle that every part of the Constitution is to be construed and applied with reference to every other part, and that no grant of power is to be construed as if it were detached from and independent of the other grants, prohibitions and limitations.

THIRD. THE PRESIDENT HAD NOT THE POWER, UNDER THE CONSTITUTION, TO MAKE OR ENFORCE THE ORDER OF JANUARY 20TH, 1899, IN SO FAR AS IT IMPOSED DUTIES UPON ARTICLES OF MERCHANDISE BROUGHT INTO PORTO RICO FROM OTHER PARTS OF THE UNITED STATES.

Prior to the landing of the United States forces in Porto Rico, in July, 1898, there had been in force a customs tariff against goods imported into Porto Rico from all countries except Spain. In July, 1898, a proclamation was issued by the military authorities, under which the Spanish duties were continued for the time being. On August 19th, 1898, the President, instead of extending the existing tariff laws of the United States to Porto Rico, so as to operate upon all goods brought into Porto Rico from foreign countries, as was done by President Polk at the time of the Mexican war, established by military order a customs tariff for the Island of Porto Rico, applicable alike to goods brought there from foreign countries and to goods brought there from other parts of the United States. This tariff, with certain modifications, remained in force until February 1st, 1899, when the amended customs tariff went into effect by virtue of the President's order of January 20th, 1899, and it in like manner applied both to goods brought into Porto Rico from foreign countries and to goods brought there from other parts of the United States.

It is alleged in the petition, in number 501, and it is a matter of history that all hostilities of every kind between the Spanish and American forces ceased from and after the 12th of August, 1898, when the protocol was signed; and that from that date down to the present time there have been no hostilities or military operations of any kind upon the island, but that immediately upon the signing of the protocol Spain relinquished all sovereignty over the island, and commenced the withdrawal of her troops; and that since the 12th day of August, 1898, the island has been in a condition of peace, and the inhabitants thereof in the enjoyment of civil rights. The Spanish forces were all withdrawn from the island before the first of February, 1899, and the United States took possession of all Government property in the island in the latter part of August or the first part of September, 1898.

It is not necessary to discuss the power of the President, as commander-in-chief of the armies of the United States during the continuance of hostilities, to put in force in the enemy's country such military measures as may be deemed advisable for the subjugation of the enemy or the support of the army. But in what respect is this tariff, imposed upon the commerce between Porto Rico and other parts of the United States after Porto Rico had been ceded to the United States and become a part of it, and while the island was in a condition of peace, and its inhabitants in the enjoyment of civil rights, in what respect is it a military measure—one calculated to harass the enemy or to bring the country under more complete subjection to the United States?

No such measure was required in order to enable the provisional military government to keep the peace and protect the inhabitants of the island in the enjoyment of domestic rights. The ports of the island were open to commerce. Citizens of the several States were allowed to freely come and go. There was no enemy on the island, no opposition of any kind to the military forces, no danger to be apprehended to the army or to the inhabitants of Porto Rico in allowing merchandise coming from the States free entry. The President himself, in his often quoted message to Congress, said that it was our "plain duty" to allow free trade. Yet, without any military necessity, in a time of peace, without the shadow of the authority of any existing law, the President, as Commander-in-Chief, put in force a tariff law, depending for its validity upon his sole and irresponsible arbitrary pleasure, by which citizens of the United States, trading with a part of their own country, in which they had a right to conduct their business, were put on a plane with foreigners, compelled, by military force, to pay a heavy tax in order to obtain possession of their property, denied any appeal to the courts, and this tax, through the inaction of Congress, remained in force for fifteen months, during

which period some two and a half million dollars were collected under its provisions.

How can such an exaction be justified? We await with interest the arguments of the Government's counsel.

Again, if this duty was lawfully imposed what limit is there upon this despotic military power? If the President could lay this tax upon commerce between Porto Rico and other parts of the United States on February 1st, 1899, did he continue to have this power until Congress should act and what if Congress had not acted for years or had been prevented from acting by the President's veto? Is the military power omnipotent in a new territory until Congress acts? Is it the function of the President when Congress does not legislate to legislate in its place? What difference does the fact—if it be a fact—that the proceeds of these duties were expended "for the benefit of Porto Rico" make? Is the constitutionality of a tax to be determined by the objects to which it is applied? Was the Louisiana Lottery changed into a public benefit and legalized because part of the proceeds was spent upon public or charitable works?

The existence of any such power in one man, however exalted his office, is opposed to the whole spirit of our institutions. If the President has this power he has it to an unlimited degree. His acts as Commander-in-Chief of the Army are not subject to any restraint by any other branch of the Government, and his orders can be enforced by the entire military power of the country.

The power of taxation is one of the most important of the powers vested in the legislative branch of the Government. By the Constitution this power is surrounded by more restrictions than any other. All bills for raising revenue must originate in the House of Representatives. No direct tax can be laid, except in proportion to representation. All indirect taxes must

be uniform throughout the United States, but the power of taxation as assumed by the President in this instance has no safeguards or limitations and it is not enjoyed by the monarch of any country which enjoys constitutional liberty.

The Constitution leaves no room for doubt on this point.

It grants certain exclusive powers to the President, but does not allow him to infringe in the least degree upon the powers of Congress. The reason is evident. In order to secure a firm executive his term is four years, and during that term he is not subject to removal unless through impeachment. He is to take care that the laws be faithfully executed and has the power of appointment. He has a qualified veto, but the grant of the veto power is utterly inconsistent with any legislative power, for, if he has the power to do any legislative act, he can prevent any bill inconsistent with his wishes from becoming a law unless passed over his veto.

There are very few reported cases which throw much light on this point; and we are convinced that this is the only instance in the history of the United States where, in a time of peace, the President has put into effect a system of taxation, except when acting as the executive of an act passed by Congress. We insist that the evident, constitutional "plain duty" of the President, as soon as Porto Rico was annexed to the United States was to follow the course of President Polk at the time of the Mexican War, and extend the existing tariff laws of the United States (Act of July, 1897) to Porto Rico as far as respects all goods brought there from foreign countries and to allow free entry to all goods brought to Porto Rico from other parts of the United States, at least until other action should be taken by Congress. This course was also followed upon the annexation of Alaska.

Syn. Treas. Dec., 1868, pp. 10, 20.

While we do not find any cases in the history of this country where any such power as this has been claimed by the President, we find many in the history of England and the Continental countries where such power has been claimed by the King, but has been successfully disputed by the people.

We can, however, find analogous cases in the reports where it has been held that the President has no power to exercise any of the functions of Congress. In *Jecker vs. Montgomery*, 13 How., 498 (1851), Chief Justice TANEY in the opinion states the facts as follows, page 512: "This case arises upon the capture of the ship 'Admittance,' during the late war with Mexico, by the United States sloop of war 'Portsmouth,' commanded by Captain Montgomery. The 'Admittance' was an American vessel, and, after war was declared, sailed from New Orleans with a valuable cargo, shipped at that place. She cleared for Honolulu, in the Sandwich Islands, and was found by the 'Portsmouth' at Saint Jose, on the Coast of California, trading, as it is alleged, with the enemy. Before this capture was made, a prize court had been established at Monterey, in California, by the military officer exercising the function of Governor of that province, which had been taken possession of by the American forces. A chaplain belonging to one of the ships of war on that station was appointed Alcalde of Monterey, and authorized to exercise admiralty jurisdiction in cases of capture. *The court was established at the request of Commodore Biddle, the naval commander on that station, and sanctioned by the President of the United States upon the ground that prize crews could not be spared from the squadron to bring captured vessels into a port of the United States.* And the officers of the squadron were ordered to carry their prizes to Monterey and libel them for condemnation in the court above mentioned, instead of sending them to the United States. In pursuance of this order the 'Admittance' was carried to Monterey and condemned by

the court as lawful prize, and the vessel and cargo sold under this sentence. The seizure at Saint Jose was made on the 7th of April, 1847, and the ship and cargo condemned on the 1st of June, in the same year."

The owners of the cargo subsequently filed a libel in the Admiralty Court for the District of Columbia against the captor, Montgomery, praying that he might be compelled to bring the cargo within the jurisdiction of that Court and institute proceedings against the property to show lawful cause for the seizure and have the same adjudicated upon by some Court of the United States having full jurisdiction in the matter, and that restitution of the goods, or the value thereof, might be awarded the libellants, with damages for the unlawful seizure. Montgomery answered, *setting up as a separate defense the judgment of the prize court at Monterey.* The Court below sustained a demurrer to this defense, and it came before the Supreme Court on appeal. At page 515, Mr. Chief-Justice TANEY says:

> "In relation to the proceedings in the court at Monterey, which is the subject of the first demurrer, the decision of the Circuit Court is correct. All captures *jure belli* are for the benefit of the sovereign under whose authority they are made; and the validity of seizure and the question of prize or no prize can be determined in his own courts only upon which he has conferred jurisdiction to try the question. And under the Constitution of the United States the judicial power of the general government is vested in one Supreme Court and in such inferior courts as Congress shall from time to time ordain and establish. Every court of the United States, therefore, must derive its jurisdiction and judicial authority from the Constitution or the laws of the United States. And neither the President nor any military officer can establish a court in a conquered country and authorize it to decide upon the rights of the United States or of individuals in prize cases, nor to administer the laws of nations.
>
> "The courts, established or sanctioned in Mexico during the war by the commanders of the

American forces, were nothing more than the agents of the military power to assist it in preserving order in the conquered territory, and to protect the inhabitants in their persons and property while it was occupied by the American arms. They were subject to the military power, and their decisions under its control, whenever the commanding officer thought it proper to interfere. They were not courts of the United States, and had no right to adjudicate upon a question of prize or no prize. And the sentence of condemnation in the court at Monterey is a nullity, and can have no effect upon the rights of any party."

This case is approved on this point in *U. S. vs. Weed*, 5 Wall., at 69.

A question with regard to the power of an executive officer to legislate came before this Court in the case of *Morrill vs. Jones*, 106 U. S., 466. In that case, Congress had passed a law providing that animals specially imported for breeding purposes should be admitted free of duty under such regulations as the Secretary of the Treasury should prescribe. The Secretary made a regulation that only animals of superior stock should be admitted. The collector, Morrill, accordingly assessed duties against certain animals imported by Jones for breeding purposes. The duties were paid under protest and suit brought against the collector and a verdict recovered.

This Court said, by Mr. Chief Justice WAITE:

> "The Secretary of the Treasury cannot by his regulations alter or amend a revenue law. All he can do is to regulate the mode of proceeding to carry into effect what Congress has enacted."

It was held in *Ex parte Milligan*, 4 Wall., 2, that courts-martial have no jurisdiction over civilians in a State which is in a condition of peace, and where the civil courts are in session, and it has been repeatedly stated in many decisions that military power is at an end as soon as the conquered territory has become a part of the United States.

FOURTH. CONGRESS HAD NOT THE POWER UNDER THE CONSTITUTION TO LAY THE TAXES OR DUTIES IMPOSED BY THE ACT OF APRIL 12TH, 1900, UPON ARTICLES OF MERCHANDISE BROUGHT INTO PORTO RICO FROM OTHER PARTS OF THE UNITED STATES, AND BROUGHT INTO OTHER PARTS OF THE UNITED STATES FROM PORTO RICO.

The duties imposed by this act may be divided into the following classes:

1. Duties upon "merchandise coming into the United States from Porto Rico" paid at the ports of entry in Porto Rico.

2. Duties upon "merchandise coming into Porto Rico from the United States" paid at the ports of entry in the "United States."

3. Taxes upon "articles of merchandise of Porto Rican manufacture coming into the United States and withdrawn for consumption or sale" equal to the internal revenue tax upon like articles "of domestic manufacture" paid at the ports of entry in the United States.

4. Internal revenue taxes imposed (or which may be imposed) in Porto Rico upon "articles of merchandise of United States manufacture coming into Porto Rico."

It is to be noted that the act does not provide for the payment of internal revenue taxes in "the United States" upon articles of foreign origin brought from Porto Rico.

The act further provides that all the duties collected in Porto Rico, both upon imports from foreign countries and upon "merchandise coming into Porto Rico from the United States," less the cost of collecting the same, and "the gross amount of all collections

of duties and taxes in the United States upon articles of merchandise coming from Porto Rico," are not carried into the general fund of the Treasury of the United States, but held as a separate fund, and placed "at the disposal of the President for the government and benefit of Porto Rico," until the organization of the local government, when "all collections of taxes and duties under this Act shall be paid into the Treasury of Porto Rico instead of being paid into the Treasury of the United States."

In connection with these provisions of the act the following questions at once arise :

What is meant by the term "United States" as here used? Does it include only the forty-five States, and leave the trade between Porto Rico and Arizona, New Mexico, Alaska and the District of Columbia free, or does it mean "the United States as constituted before the late war with Spain, and hence not apply to the trade between Porto Rico and Hawaii, Guam and the Philippines"?

Is this an attempt to levy import duties upon commerce between domestic ports, or are these exactions of the nature of excises or internal revenue taxes? Are they subject to the requirement of uniformity; and, if so, are they uniform, and, finally, has Congress any warrant for laying these taxes arising out of its power to govern the territory of the United States?

For convenience of argument we shall discuss the last of these questions before taking up the others.

## Power to Govern Territory is Limited.

*The power to govern the territory of the United States, like every other power granted to the Federal Government, is limited by the grant and limitation of other powers, and by the rights secured to the individual.*

I. There is no occasion in these cases to dispute the fact that the Federal Government has power to

govern the territory of the United States. Such power may be derived solely from the express grant to Congress in the third section of the fourth article of power "to dispose of and make all needful rules and regulations respecting the territory and other property of the United States," or it may be a necessary consequence of the undoubted power to acquire territory by discovery, by conquest or by treaty; whatever the source, the existence of the power is not disputed, but the question is whether that power is absolute or limited.

In the first place, and before taking up the question of how far the power to govern territory is limited by other powers, let us eliminate from the argument certain questions which do not relate to this discussion. We do not attempt to claim that Congress cannot provide for local taxation in a territory, or that such local taxation for local purposes is governed by the requirement that, if direct, it shall be apportioned according to population, or, if indirect, shall be uniform throughout the United States. A local Legislature created by Congress for a Territory, or Congress in governing that Territory, can certainly impose local taxes upon persons and property within the territorial limits to much the same extent as a State can tax property within its limits, but no local Legislature, however broad its powers, can enact laws having extra-territorial operation.

The collection of duties at the port of New York from citizens of the State of New York, levied upon merchandise belonging to them, and brought by them from Porto Rico, is not a matter connected with the government of Porto Rico, but a matter connected with, and relating strictly to, the government of New York. No local Legislature in Porto Rico could send its officers to New York with power to collect duties and enforce penalties for nonpayment. The collection of duties at its own ports is a power which the State of New York has, it is true, renounced through the Constitution, but it is not a power which could be

exercised by the government of any other political subdivision of the country.

While, therefore, Congress has power to govern Porto Rico, that power carries its own inherent limitation that it shall not be exercised at any place outside of the limits of that island, or possibly of the other Territories of the United States. Congress cannot, under the guise of governing or making rules and regulations for any Territory, impose taxes in the States, so that the power to collect the taxes in New York, if it exists, must be based upon some express delegation of power to Congress by the Constitution, and can only be exercised according to the limitations of the grant.

Referring again to "merchandise brought into Porto Rico from the United States":

*Congress could not impose the duties upon goods "coming into Porto Rico from the United States" under its power to govern territory.*

To make this point clearer let us assume, for the purpose of the argument, that prior to the act of April 12th, 1900, Congress had organized Porto Rico as a Territory, and had given it a territorial government with all the power over the Island of Porto Rico with respect to local matters which Congress itself possesses. It cannot be doubted that such a government would have power to lay and collect taxes in the Island of Porto Rico for local purposes, and that it could subject all property, real and personal, within the island to such taxation, in like manner as the several States can subject property within their limits to taxation for local purposes (*Talbot vs. Silver Bow County*, 139 U. S., 438). But such a local legislature would not have the power to impose any tax or burden upon commerce between any one of the States and the Island of Porto Rico (*Stoutenburgh vs. Hennick*, 129 U. S., 141).

Since, then, the local legislature of Porto Rico, however broad its powers, could not enact this tariff, it seems clear that Congress in imposing this tariff against goods brought from a State into Porto Rico,

and in like manner against goods brought from Porto Rico into a State, is not acting under the power to make rules and regulations for a territory, or under any power of governing a territory, arising out of the power to make war and to acquire territory by conquest or treaty.

II. Until the enactment of the Act of April 12th, 1900, Congress had never attempted to impose any tax or burden on commerce between the various sections of the country. Believing, therefore, that this exact point has never been considered by this Court, we shall now briefly refer to the clauses of the Constitution which in order to carry out their plain intent must be construed so as to include the territory as well as the States. It is evident that where the preamble says, "We, the people of the United States," it refers to the people of the several States which adopted the Constitution; but where the preamble says, "We do ordain this Constitution for the United States of America," the phrase "United States of America" refers to the nation, then composed of thirteen States and the territory northwest of the Ohio River, and that it now refers to the entire national domain.

The legislative power vested in Congress by the first section of the First Article is not limited to the power which relates only to the States, but includes power over every form of legislation.

The next five sections regulate the organization of Congress and the electoral franchise, and obviously apply only to the States, but the 7th article, that all bills for raising revenue shall originate in the House of Representatives, must apply to bills for raising revenue in the Territories as well as elsewhere in the Union.

In Section 8, the clause requiring uniformity of indirect taxes, refers, as we claim, to both the Territories and the States and to the District of Colombia (*Loughborough vs. Blake*, 5 Wheaton, 317);

the power "to regulate commerce with foreign nations and among the several States and with the Indian tribes" includes the power to regulate such commerce between a territory and foreign nations and between the Territories and States as is evidenced by the acts authorizing the States and Territories to exercise their police power over liquors brought into their borders from other States or Territories (*Vance vs. Vandercook Co.*, 170 U. S.. 438).

The clause, "To borrow money on the credit of the United States," evidently means on the credit of the nation; in the next clause but one, "To establish an uniform Rule of Naturalization," means a rule which shall be in force in every part of the country, the Territories and District of Columbia as well as the States.

Uniform laws on the subject of bankruptcy throughout the United States must mean throughout the Territories, as well as throughout the States, as has been the practice in framing all the bankruptcy laws; for, otherwise, Congress would not have power to discharge a bankrupt residing in a Territory from the claims of his creditors, citizens of States.

The powers to coin money, to provide for the punishment of counterfeiting, to establish post offices, to grant patents, to establish tribunals inferior to the Supreme Court, to raise and support armies, to make rules for the government of the land and naval forces, to "provide for calling out the militia to execute the laws of the Union, suppress insurrections and repel invasions" are all general and national in their nature and may be exercised in every part of the dominion of the United States. All these powers conferred by the eighth section of the first article require general uniform laws universal in their operation and to be enforced in every part of the country without regard to the form of its organization.

The prohibitions in the ninth section of the first article apply to Congress when legislating for every

part of the country, States, Territories and the District of Columbia.

It cannot be contended that Congress can suspend the privilege of the writ of *habeas corpus* in a territory where it could not in a State or that Congress can pass any bill of attainder or *ex post facto* law applicable to the territories or lay a direct tax (for national purposes) on the territories except in proportion to population (Loughborough vs. Blake). Can Congress then lay an export duty (for national purposes) on articles exported from a territory? Such a duty would probably lack the requisite uniformity in any case so the question is an academic one. At least, we can say that Congress has not as yet attempted to do so, and by the Act of April 12th, 1900, it has prohibited the laying of any export duty by the Legislative Assembly of Porto Rico.

The next clause provides that:

> "No preference shall be given by any regulation of commerce or revenue to the ports of one State over those of another; nor shall vessels bound to or from one State be obliged to enter clear or pay duties in another."

We submit that each organized territory is entitled to stand on the same footing in this regard as a State and until now all laws regulating the coasting trade have so provided.

The next clause, "No money shall be drawn from the treasury but in consequence of appropriations made by law," is unlimited in its scope, and hence applies to all appropriations for the Territories. In this connection we submit that the provisions of the Porto Rico Act placing the duties collected thereunder in a special fund at the disposal of the President is not an "appropriation made by law" within the meaning of this clause.

The prohibition against granting titles of nobility is universal, as is the final prohibition against officers of

the United States receiving titles from foreign princes or States.

The 10th Section of Article I., we submit, applies to the legislation of the territorial governments when organized, and to the legislation of Congress when acting as a territorial government. For example, it cannot be contended that any local territorial legislature, or the Legislature of Porto Rico, for example, even if invested by Congress with the fullest powers, could enter into any treaty, alliance or confederation, grant letters of marque and reprisal, coin money, emit bills of credit, make anything but gold and silver coin a tender in payment of debts, pass any bill of attainder, or grant any title of nobility; or that such local Legislature could, without the consent of Congress, lay any imposts or duties on imports or exports for local purposes, or lay any duty on tonnage, keep troops or ships of war in time of peace, or enter into any agreement or compact with another State or with a foreign power, or engage in war. While Congress has exclusive power over the subjects of legislation enumerated in the 10th Section of Article I. (except the prohibition against *ex post facto* laws or laws impairing the obligation of contracts or granting titles of nobility), its power is to be exercised for national purposes only by uniform laws of universal application, and it is not derived from, or incident to its powers to make rules and regulations respecting the territory belonging to the United States or any implied power to govern newly acquired territory.

Coming now to Article II., defining the executive power, unquestionably those portions of it regulating the electoral franchise apply only to the States; but the following provisions, defining the power of the Executive, must apply to the President as the Executive of the nation with respect to the Territories as well as with respect to all other parts of the country.

The second section provides that the President, "by and with the advice and consent of the Senate, shall appoint all other officers of the United States, whose appointments are not herein otherwise provided for, and which shall be established by law; but Congress may by law vest the appointment of such inferior officers as they think proper in the President alone, in the Courts of Law, or in Heads of Departments"—must of necessity apply to the appointment of all officers within the Territories.

But if the Attorney-General is correct in the position which he has taken in the case at bar, then it is within the power of Congress in legislating for the Territories to provide that the laws shall be executed by some other officer than the President of the United States, and that all officers in the Territories shall be appointed by Congress, or by any other body to whom it may see fit to delegate this power.

It is settled that the first two sections of the third article vesting the judicial power of the United States in one Supreme Court and in such inferior courts as Congress shall establish do not apply to the organization of the local territorial courts, but this is necessarily so, because there is no provision in Article III. for giving any of the "*courts of the United States*" general jurisdiction of actions at common law, or in equity, not arising under the Constitution or laws of the United States, etc., where both plaintiff and defendant are inhabitants of the same territory.

The third section of Article III., defining treason against the United States and prescribing its punishment, is, as we contend, a limitation upon the power of Congress in punishing any act of treason within the Territories. But, if the argument of the Attorney-General be followed to its logical conclusion, it would follow that in the Territories Congress could provide that a person could be convicted of treason upon the testimony of one witness, or that he be so convicted upon hearsay evidence, and that such treason might

28539



consist of other acts than levying war against the United States, or in adhering to their enemies, giving them aid and comfort.

Coming now to Article IV. of the Constitution, the first section reads: "Full faith and credit shall be given in each State to the public acts, records and judicial proceedings of every other State. And the Congress may by general laws prescribe the manner in which such acts, records and proceedings shall be proved, and the effect thereof." Pursuant to this section of the Constitution, Congress from the earliest times has passed general laws which provide for the manner in which the public acts, records and judicial proceedings of the organized territories shall be proved in the courts of the States. It has never been suggested that this legislation has any other source than this section of the Constitution; but, unless a territory is to be treated as a State within the meaning of this section, Congress could have no power to prescribe a rule which the Courts of the States are obliged to follow. Innumerable property rights have become vested since the earliest times through judicial decrees, based upon evidence proved under such Acts of Congress. The validity of divorces granted by territorial courts (where they have acquired jurisdiction of the parties) has been recognized in every State, and the power of Congress to provide by such laws that the public acts, etc., of Territories shall be given credit in States has never been doubted.

The first paragraph of Section 2 of Article IV., which reads that "The citizens of each State shall be entitled to all the privileges and immunities of citizens in the several States," must include citizens of the United States residing in the Territories, for otherwise, prior to the adoption of the Fourteenth Amendment, the States would have been able to deprive such residents of Territories of the rights enjoyed by their own citizens.

The next paragraph, providing that "a person charged in any State with treason, felony, or other crime, who shall flee from justice, and be found in another State, shall, on demand of the Executive Authority of the State from which he fled, be delivered up to be removed to the State having jurisdiction of the crime," has always been supposed to cover the case of a person charged with crime in a Territory, who has fled to a State, and to require the Executive of the State to deliver up such a person to the Executive of the Territory, and all the interstate extradition acts of Congress have been framed upon this understanding.

In *Roberts vs. Reilly*, 116 U. S., at 94, it is said, with reference to this clause:

> "There is no express grant to Congress of legislative power to execute this provision, and it is not in its nature self-executing; but a contemporary construction, contained in the Act of 1793, Stat. 302, ever since continued in force, and now embodied in §§ 5278 and 5279 of the Revised Statutes, has established the validity of its legislation on the subject."

Coming next to the amendments, it has been held in the cases of *Springville vs. Thomas*, 166 U. S., 707; *Thompson vs. Utah*, 170 U. S., 343; *Callan vs. Wilson*, 127 U. S., 540, that the Fifth, Sixth and Seventh Amendments apply to the Territories and the District of Columbia, as well as to the States, and that Congress in legislating for the territories and District is limited by these amendments.

In the Mormon Church case, 136 U. S., 1, it is virtually conceded that the provision of the First Amendment, that "Congress shall make no law respecting an establishment of religion," applies to legislation in relation to the Territories. And while few, if any, cases have ever arisen in the Territories with regard to the remainder of the first ten amendments, this is

28540



probably owing to the fact that the Organic Act of each Territory has contained a Bill of Rights, and that such rights have seldom been violated.

The proposition which we are arguing has been put in another form, that "*the Constitution extends ex proprio vigore over the Territories*," which is a convenient metaphor to use in this connection. But the argument advanced by the Government that the Constitution does not extend over the Territories until extended by Act of Congress is conclusively refuted by the evident proposition that, if the Constitution is extended over territory only as a law through Act of Congress or by treaty, then any subsequent Act of Congress inconsistent with such extension must, *pro tanto*, supersede its provisions, and leads inevitably to the deduction that constitutional rights are now enjoyed in the Territories of Arizona, New Mexico and the District of Columbia only by the grace and favor of Congress, which can violate such rights at any time.

This deduction has been expressly condemned by the decisions of this Court in *Callan vs. Wilson*, 127 U. S., 540, and *Springville vs. Thomas*, 166 U. S., 707.

In addition to these decisions, which have been quoted at length in the briefs filed by other counsel, we wish to call particular attention to a construction of the Constitution by the first Congress with relation to its power to govern the Northwest Territory:

The ordinance of 1787 for the government "of the territory of the United States Northwest of the River Ohio" (1 Stat., 51, note) was adopted by the Congress of the United States on July 13th, 1787, while the Articles of Confederation were in force. The ordinance provided that the Governor, Secretary and other officers of the Territory should be appointed by and make reports to Congress.

The Constitution of the United States was adopted September 17th, 1787, but the Government therein provided for was not organized until March 4th, 1789. On August 7th, 1789, Congress passed an act (Chap. 8),

entitled " An Act to provide for the government of the territory Northwest of the River Ohio " (1 Stat., 50).

The preamble of this act is as follows:

> " WHEREAS, in order that the ordinance of the United States in Congress assembled for the government of the territory Northwest of the River Ohio *may continue to have full effect, it is requisite that certain provisions should be made so as to adapt the same to the present Constitution of the United States.*"

This shows conclusively that, in the opinion of the members of the first Congress, the provisions and limitations of the Constitution were applicable to this territory, and that Congress *could not legislate for this territory except in the manner prescribed by the Constitution.* The act then provides:

> " SECTION 1. Be it enacted by the Senate and House of Representatives in Congress assembled that in all cases in which by the said ordinance any information is to be given, or communication made by the Governor of the said Territory to the United States in Congress assembled, or to any of their officers, it shall be the duty of the said Governor to give such information, and to make such communication to the President of the United States, and the President shall nominate, and by and with the advice and consent of the Senate shall appoint, all officers which by the said ordinance were to have been appointed by the United States in Congress assembled, and all officers so appointed shall be commissioned by him, and in all cases where the United States in Congress assembled might by the said ordinance revoke any commission, or remove from any office, the President is hereby declared to have the same powers of revocation and removal."

The fact that Congress passed this special act immediately after its organization in order, as expressed in the preamble, that the ordinance of 1787 might continue to have full effect, is the strongest evidence that

28541



in the minds of the framers of the Constitution that instrument applied to every part of the Territory, as well as to every one of the organized States. If the first Congress had been of the opinion that it had power to legislate for the Northwest Territory, without regard to the provisions of the Constitution, it is inconceivable that it would have passed this act as one of its very first enactments, before even the Treasury Department had been organized, or the act for registering and clearing of vessels and regulating coasting trade, or the act fixing the salaries of the executive officers of the Government, or the act to provide for the safe-keeping of the acts, records and seals of the United States, or the act for the temporary establishment of post-offices, or the act allowing compensation to members of Congress, or the act allowing compensation to the Judges of the Supreme Court, or the act allowing compensation to the President, or the act to establish the Judicial Courts of the United States. All of which acts were passed more than a month later than this Act of August 7th, 1789. Yet it was deemed so important by the members of the first Congress that the Government of the Northwest Territory should conform to the terms of the Constitution that this act was passed before the organization of the Judicial Department, and before the complete organization of the Executive and Legislative Departments.

Contemporaneous practical construction of the Constitution has always been held to be of the greatest weight, and we submit that the construction by the enactment is almost conclusive upon the point that the Constitution includes every legislative act relating to the Territories.

III. *The duties are not uniform throughout the United States as required by the terms of the eighth section of the first article of the Constitution.*

Unless, which we deny, the power to govern territory operates so as to give Congress the power to tax

the Territories for national purposes without reference to this article, then the duties must fail for lack of uniformity. The section in question is as follows :

> " The Congress shall have power to lay and collect taxes, duties, imposts and excises, to pay the debts and provide for the common defense and general welfare of the United States, but all duties, imposts and excises shall be uniform throughout the United States."

If Porto Rico was a part of the United States at the time of the passage of the act, then there seems no room for doubt that these duties are not uniform.

We contend that it is settled both by authority and by principle that the limitation on the power is co-extensive with its exercise ; that Congress derives its power to lay duties and excises for national purposes in the Territories, as in every part of our domain, from this express grant, and that, as the power extends to all places subject to the legislative power of Congress, it is in all places subject to the limitation.

*Loughborough vs. Blake*, 5 Wheat., 317.

If this is not the true construction of the power, then Congress can impose taxes for the support of the Government in the Territories alone or in particular Territories. It can tax people who have no representation whatever in the Federal Government for the benefit of the States or of other Territories. Any other construction deprives the very people who have most need of protection of any security against the aggressions of a power which they have no means to resist. We cannot believe that this Court will so decide.

We do not multiply examples of the lack of uniformity of these duties, because we take it to be a self-evident proposition that a tax upon the commerce of a particular section of the country is not uniform throughout the whole country. We take it that this is conceded by the counsel for the Government, but

they maintain that the "uniformity clause" *was intended only for the benefit and protection of the several States*, and that the term "United States," as used in this section, means "*only the territory comprised within the several States of the Union*" (Atty. Gen. Brief in Goetze Case, p. 127).

If the counsel for the Government in these cases should take another position on this point we shall doubtless have an opportunity to reply. At present we need only say that if the term "United States" in this section means the whole domain of the nation the duties must fail for lack of uniformity. On the other hand, if Porto Rico is still a foreign country then all the duties involved in the two *Dooley Smith* cases were invalid, because levied in violation of the terms of the 9th section of the First Article which provide that:

"*No tax or duty shall be laid on articles exported from any State.*"

The fact of the postponement of its collection until the entry of the goods at the port of San Juan under the claim that it is a duty on imports does not affect the unlawful character of the imposition

If these goods were imported into Porto Rico, they were necessarily exported from New York.

No claim can be maintained that the tax is levied upon property within the limits of Porto Rico. The tax is not laid upon property in Porto Rico, but it is laid before the goods have become mingled with the general mass of property on the island.

In *Rhodes vs. Iowa*, 170 U. S., 415, in discussing Bowman vs. Chicago and N. W. R. R. Co., 125 U. S., 465, Mr. Justice WHITE says:

> "It was decided that the transportation of merchandise from one State into and across another was interstate commerce, and was protected from the operation of state laws *from the moment of shipment whilst in transit and up to the ending of the journey by the delivery of the goods to the consignee at the place to which they were consigned.*"

IV. *The duties in question are not imposts or customs duties, but are of the nature of internal revenue duties or excises.*

"Imposts" or "customs duties," by the definition of these terms as stated many times by this Court, can be imposed only upon goods imported from foreign countries. It may well be doubted whether Congress has any power to tax commerce between the States and a Territory; but, if it has, then any tax on such commerce must be of the nature of an excise.

Woodruff vs. Parham, 8 Wall., 123, at 132.

V. In conclusion, we would say that in writing this brief it has not seemed necessary to go more at length into the cases which have already been so fully cited by other counsel. The cases of *Cross vs. Harrison*, *Dred Scott vs. Sandford* and other cases cited in their briefs to which we have not referred at length, seem to us to establish the propositions for which we are contending. These propositions are in many respects novel, but they all may be summed up by saying that there is no warrant in the Constitution for the exercise of any arbitrary unlimited power either by the President or Congress in any part of our country.

Pomeroy in his treatise on constitutional law, commenting on the decision in *Dred Scott vs. Sanford*, referred to in the brief of the Attorney-General in the *Goetze* case at page 152, says:

> "The position assumed by the court that Congress in the exercise of its legislative function for the territories is bound by the restrictive clauses of the Bill of Rights, cannot be successfully attacked. Indeed, it can make no difference whether that body proceeds under the express grant of Article IV. or under its power implied in the capacity to acquire and hold additional soil; in either case it is equally hedged round and trammelled by the safeguards of individual rights that are contained in the first eight amendments. No American

citizen in whose veins flow any drops of Saxon blood, and who inherits the results of the glorious struggle which his English forefathers maintained with power and prerogative can deny or question this doctrine."

Pomeroy Const. Law, § 708.

VI. The judgments of the Court below should be reversed, and the cause remanded with directions to overrule the demurrers.

January 2d, 1900.

HENRY M. WARD,
For Plaintiffs in Error.

J. G. CARLISLE,
WILLIAM EDMOND CURTIS,
Of Counsel.

No. 501 and 502.

28544

Brf. of Ward, Carlisle & Curtis for

Supreme Court of the United States. P. &

OCTOBER TERM, 1900.

Office Supreme Court U.S.
FILED
JAN 9 1901
JAMES H. McKENNEY,
Clerk.

Filed Jan. 9, 1901.

No. 501.

HENRY W. DOOLEY ET AL., PLAINTIFFS IN ERROR,

*vs.*

THE UNITED STATES, DEFENDANT IN ERROR.

---

*No. 502.*

THE SAME

*vs.*

THE SAME.

---

# APPENDIX TO BRIEF FOR PLAINTIFFS IN ERROR.

---

HENRY M. WARD,
*For Plaintiffs in Error.*

J. G. CARLISLE,
WILLIAM EDMOND CURTIS,
*Counsel.*

---

JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C. 1-8-'01

28545

# APPENDIX TO BRIEF FOR PLAINTIFFS IN ERROR.

Referring to the point stated at page 41 of our brief, that these duties are not uniform "throughout the United States," we wish in this Appendix to call attention to the fact that the first internal-revenue taxes were enforced and collected uniformly throughout both the States and the Territories.

There is a statement at page 104 of the brief filed by the Attorney General in the Goetze case, from which the inference might be drawn that the internal-revenue taxes were not levied or collected in the Territories till 1868, and it is stated that the act of March 3, 1791 (1 Stat., sec. 4, pp. 199, 200), divided the United States into fourteen collection districts, each consisting of a State, but did not provide for the collection of internal revenue in the Territories.

A reference to the statute in question and to the other statutes relating to internal-revenue taxes and tariffs in force at that time leads us to the conclusion that the first customs duties and internal-revenue taxes were in fact levied and collected uniformly throughout the Territories as well as the States, both under the systems of customs duties and internal-revenue taxes in force from 1791 to 1802 and those in force from 1813 to 1815.

*Tariffs and Internal Revenue Taxes of 1791–1802.*

The act of 1791, 1 Stat., 199, is entitled:

> "CHAP. XV. An act repealing, after the last day of June next, the duties heretofore laid upon distilled spirits *imported from abroad* and laying duties in their stead; and also upon spirits distilled *within the United States*, and for appropriating the same."

This act therefore contains two independent schemes of taxation: first, a customs tariff upon imported foreign

liquors, and, second, an internal excise upon spirits of domestic manufacture.

The first section relates solely to the customs tariff, and prescribes the rates of duty upon spirits of different degrees of proof.

The second section provides that such duties shall be collected by the same persons and in the same manner as had been theretofore provided, and that the former act concerning the collection of duties, etc., shall remain in full force, except as to the alterations contained in this act.

The third section regulates the manner of payment of such duties. The fourth section (pp. 199, 200) states that—

> " in order to a due collection of the duties imposed by this act, be it further enacted that the United States shall be divided into fourteen districts, each consisting of one State."

And further provides that the President may make certain alterations in such districts as occasion may arise.

The following nine sections regulate the duties of the supervisors, inspectors, and other officers, and the details of collection.

The fourteenth and fifteenth sections (1 Stat., 202, 203), lay the excise on domestic spirits as follows:

> " SEC. 14. That upon all spirits which after the said last day of June next *shall be distilled within the United States* from * * * foreign materials, there shall be paid * * * the duties following." * * *

> " SEC. 15. That upon all spirits which after the said last day of June next *shall be distilled within the United States* from any article of the growth or produce of the United States * * * there shall be paid for their use the duties following * * *."

These provisions constitute the first internal-revenue tax laid by Congress. They are referred to in a foot-note in the

report of *Knowlton vs. Moore*, 178 U. S., at page 94. The rates of internal duty provided by these sections were altered by the act of May 8, 1792, 1 Stat., 267, which remained in force until repealed in 1802. This new excise was likewise imposed on spirits *distilled within the United States.*

At this period the territory northwest of the Ohio had, of course, no seaports, and the customs administrative act of 1790 did not create any ports of entry in the Northwest Territory. This act was the first to enact any internal-revenue taxes, and there was at this time no other act in force for the collection of internal duties. This "customs administrative act," which was continued in force by section 2 of the act of 1791, just referred to, is the act of August 4, 1790, 1 Stat., 145. This act provided, in section 70, page 177:

> "That no goods, etc., of foreign growth or manufacture shall be brought into the United States from any foreign port or place in any other manner than by sea nor in any ship or vessel of less than 30 tons burden except within the district of Louisville nor shall be landed or unladen at any other place than is by this act directed under the penalty of seizure and forfeiture of such vessels and of the goods wares or merchandise brought in landed or unladen in any other manner. And all goods wares and merchandise brought into the United States by land contrary to this act shall be forfeited." * * *

This provision forbidding the introduction of foreign goods by land is a substantial re-enactment of a similar provision in the act of July 31, 1789, chap. V, 1 Stat., 29, § 40, pp. 48, 49, and evidently applies to the Northwest Territory as well as to the borders between the respective States and Canada and Florida. It was evidently enacted in order to effectually prevent smuggling over the thinly settled frontier.

This customs administrative act of 1790 remained in force until 1799, when it was repealed by the administrative

act of March 2, 1 Stat., 627, to which act we shall presently refer.

The effect of the act of 1791 imposing both duties upon imported and excises upon domestic spirits, and constituting each State a collection district, as amended by the new rate of excise imposed by the act of 1792, when read in connection with the customs administrative act of 1790 and the general tariff act of August 10, 1790 (1 Stat., 180), was as follows:

1. All foreign spirits, as well as other foreign goods, had to be entered at the ports of entry provided for by the act of 1790.

2. No foreign spirits or other goods could be brought into the Northwest Territory, except through entry by a seaport or through the district of Louisville.

The authority of the collector for the district of Louisville extended—

> "over all the waters, shores, and inlets included between the rapids and the mouth of the Ohio river on the south side thereof" (1 Stat., 150).

3. An excise duty was laid on all spirits distilled within the United States, but there was no specific provision for collecting this excise in the Northwest Territory.

This omission in the act of 1790 to specifically provide for the collection of the excise in the Northwest Territory was remedied by the act of June 5, 1794 (1 Stat., 378).

This act is entitled "An act making further provision for securing and collecting the duties on foreign and domestic spirits, stills, wines, and teas." It provides:

> "SECTION 1. That *in order to facilitate and secure* the collection of the revenue on distilled spirits and stills in *such States as have been or hereafter may be erected, and in the territory northwest and south of the River Ohio,*

the President of the United States shall be and he is hereby authorized and empowered to form and erect such new districts and surveys and to make such alterations in and additions to the several districts as from time to time shall appear in his judgment expedient and necessary."

The territory of the United States was placed on the same footing with the several States by the further provisions of section 9 of that act (1 Stat., 380), which reads:

> "That it shall and may be lawful for the judicial courts of the several States, and of the territory of the United States northwest of the River Ohio, and of the territory of the United States south of the River Ohio, to take cognizance of all and every suit and suits, action and actions, cause and causes arising under or out of the laws for the collection of revenue upon spirits distilled in the United States, and upon stills, which may arise or accrue at a greater distance than fifty miles from the nearest place established by law for holding a district court."

*This act of* 1794, *however, did not impose any duties or excises* whatever. It simply provided means for collecting excises which *had already been imposed on spirits distilled* within the United States, by sections 14 and 15 of the act of 1791, as amended by the act of 1792, and authorized the President to erect new districts as might be necessary on the erection of new States and in the Territories northwest and south of the Ohio, so removing all doubt which might be entertained as to the power of the executive department to collect taxes in these Territories.

Territories were again put upon the same footing as the States with regard to this internal revenue by the act of July 11, 1798 (1 Stat., 591), which provided for the payment of the salaries of the various supervisors and collectors of internal revenue and gave the supervisor of the Territory of Ohio

$700, the same salary as the supervisor of the State of Connecticut, in addition to $300 per annum for clerk hire, which allowance was also made to each of the supervisors of Vermont, Delaware, and Tennessee. The supervisor of Ohio mentioned in this act is evidently the supervisor who had been appointed by the President in pursuance of the act of June 5, 1794, just referred to.

This excise on spirits provided by the act of 1792 continued in force until 1802. The customs administrative act of 1790 remained in force, with its prohibition of bringing in goods by land, until 1799, when it was repealed by the act of March 2 (1 Stat., 627). This act made a new division of the whole of the United States, both States and Territories, into districts, with ports of entry and of delivery. Elaborate provisions were made for the subdivision of the six districts of Erie, Dertoit, Michelimakenac, Monac, Illinois, and Ohio, into which the Northwest Territory was divided (1 Stat., 638), and a further district was erected—

> "on the River Mississippi south of the State of Tennessee, which shall include all the waters, shores, and inlets of the River Mississippi and other navigable rivers and waters connected therewith lying within the jurisdiction of the United States and south of the said State."
>
> 1 Stat., 639.

No duties were imposed by this act, but it was purely an administrative act, for the collection throughout the United States of the tariff then in force.

By the provisions of the act of April 6, 1802 (chap. 19, Stat., 148), all the internal-revenue taxes were repealed.

Internal-revenue taxes of 1813, 185.

The act of July 22, 1813 (3 Stat., 22), divided the various 18 States into collection districts and provided for the assessment and collection of direct taxes and internal duties in

the States. This act did not provide for a collection district for the Northwest Territory.

By an act passed on August 2, 1813 (chap. 16, 3 Stat., 82), entitled "An act making further provision for the collection of internal duties and the appointment and compensation of assessors," provision was made for the collection of all internal-revenue taxes in the Territories. This act provides:

> "SECTION 2. That the President of the United States be and is hereby authorized to divide respectively the several Territories of the United States and the District of Columbia into convenient districts *for the purpose of collecting the internal duties above specified*, and to nominate, and by and with the advice and consent of the Senate to appoint a collector for every such district."
>
> "SECTION 3. That *the several duties* laid by the acts entitled 'An act laying duties on the sale at auction of merchandise;' 'An act laying duty on sugar refined in the United States;' 'An act laying duties on carriages for the convenience of persons;' 'An act laying duties on licenses to retail dealers in wines, spirituous liquors and foreign merchandise;' 'An act laying duties on licenses to distillers of spirituous liquors;' 'An act laying duties on notes of banks, bankers, and certain companies whose notes, bonds and obligations are discounted by banks and bankers, and bills of exchange of certain description,' shall be laid and collected in the several Territories of the United States, and in the District of Columbia, in the same manner and under the same penalties as is provided by the said acts respectively."

Referring to the acts just quoted in section 3 of the act of August 2, 1813, we find that the act laying duties on sugar (chap. 21, p. 35) provides that—

> "From and after *the 1st day of January next* there shall be levied, collected and paid upon all sugar which shall be refined *within the United States*," etc.

The act laying duties upon sales at auction (chap. 26, p. 44) provides:

> "That from and after *the 1st day of January next*, there shall be levied, collected, and paid for the use of the United States upon all sales by way of auction, as hereinafter described, which shall be made *within the United States.*"

The act laying duties on carriages (chap. 24, p. 40) provides:

> "That *from and after the last day of December* next there shall be levied, collected and paid the following yearly rates and duties *upon all carriages* for the convenience of persons," etc.

The act laying duties on licenses to distillers (chap. 25, p. 44) provides:

> "That *every person* who on *the 1st day of January* next shall be the owner of any still, or stills, or other implements," etc.,

shall apply to the collector appointed by the act of July 22 for a license, and section 2 prescribes certain license fees.

The act laying duties on licenses to retailers of wines, spirituous liquors, etc. (chap. 39, p. 72), provides by section 2:

> "That every person who *on the 1st day of January next* shall be a retail dealer in wines," etc.,

shall apply to the collector for the collection district within which he resides for a license, and the fourth section regulates the fees.

The act laying duties on the notes of banks, etc. (chap. 53, p. 77), provides:

> "That from and after *the last day of December next* there shall be levied, collected, and paid *throughout the United States* the several stamp duties following."

28543



We have referred to these acts in detail for the purpose of completely refuting any claim which might be made that the internal-revenue taxes provided by these acts were ever collected otherwise than uniformly throughout the entire country. While the act establishing the collection districts in the States was enacted on July 22 and the act establishing the collection districts in the Territories and the District of Columbia was not enacted until August 2, none of these internal-revenue taxes became operative until the 1st of January, 1814.

The omission in the act of July 22, 1813 (3 Stat., 22), to provide for the collection of internal revenue in the Territories was probably due to the fact that this act, which did not impose any tax, but was purely an administrative act, provided for the collection of both "internal duties" and direct taxes (Preamble, 3 Stat., p. 22), and directed that separate accounts should be kept of direct taxes and of the internal duties (§ 33, 3 Stat., p. 43.)

The direct taxes were not laid in the Territories, but they were not required by the Constitution to be uniform, but only to be apportioned among the States. They were, however, laid by apportionment in the District of Columbia by the act of February 27, 1815 (3 Stat., 216), by which an annual tax of $19,998.40 was provided for in the District. This is the act which came before this court in *Loughborough vs. Blake*, 5 Wheat., 317, where its validity was upheld.

All these internal duties were repealed by the act of December 23, 1817 (3 Stat., 401), and no other internal duties were enforced until 1862. All the internal duties of that period laid by the acts of 1862, 1864, and 1866 were imposed uniformly in the States, Territories, and District of Columbia.

To sum up the results of an examination of these early statutes, we may say that it was the established practice that all "duties, imposts, and excises" should be "uniform throughout the United States."

HENRY M. WARD,
*For Plaintiffs in Error.*

J. G. CARLISLE,
WILLIAM EDMOND CURTIS,
*Counsel.*

JANUARY 7, 1901.